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No. 04-983

IN THE
Supreme Court of the United States

JOE ARPAIO,
Maricopa County Sheriff, in his official capacity,
Petitioner,

v.

JAMIE DEMERY, *et al.*,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals properly upheld a preliminary injunction barring a county sheriff from placing video cameras in the non-public areas of a jail—including the men's bunk bed area, the women's toilet, and the areas in which pretrial detainees are subjected to patdown searches—and broadcasting live images from those cameras through a commercial Internet site 24 hours a day, because such a practice likely violates the due process rights of pretrial detainees to be free from punishment.

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RESPONDENTS' BRIEF IN OPPOSITION

The district court's order granting a preliminary injunction in this case, which the decision below affirmed, applied well-settled legal principles to an extremely unusual set of facts. As far as respondents are aware, no other jailer in the United States has done what petitioner has done here: place video cameras in the non-public areas of a jail and continuously broadcast live images of pretrial detainees as they are fingerprinted, photographed, booked, and searched; as they sleep; and even as they use the toilet. The unique nature of these facts, standing alone, demonstrates that this case does not present a recurring question worthy of this Court's review. And given the significance of a factual record in a case of this kind, the interlocutory posture of the case provides an additional reason to deny certiorari.

This Court should also decline review because the conflicts claimed by the petition are illusory. The petition argues that the decision below implicates a circuit split concerning the correct legal standard to apply to conditions of confinement claims by pretrial detainees, but the circuits uniformly apply the same standard. The petition also attempts to manufacture a conflict with cases involving sex offender notification laws and perp walks. Far from conflicting with the decision below, however, these other cases *support* it: They suggest that a policy of public humiliation that goes beyond the dissemination of information is likely to be deemed punitive, and that the government's role in such matters must be carefully circumscribed. Finally, the petition's broad suggestion that *any* governmental infliction of humiliation is insulated from constitutional scrutiny is without support in this Court's cases.

STATEMENT

A. Factual Background

Petitioner Joe Arpaio is the Sheriff of Maricopa County, Arizona. Sheriff Arpaio has become widely known for his unconventional correctional practices. Pretrial detainees in his jails are forced to wear pink underwear, eat green bologna, work on chain gangs, dig graves, and sleep in tents in the Arizona desert. *See* Barry Graham, *Star of Justice*, Harper's, Apr. 30, 2001, at 59. Arpaio's website boasts about the unique nature of his practices. *See* Maricopa County Sheriff's Office Website, http://www.mcso.org/submenu.asp?file=aboutmcso &page=main (last visited May 16, 2005) ("No other detention facility in the country . . . can boast of 1200 convicts in tents; no other county or state facility can boast of a gleaning program that results in costs of under 45 cents per meal per inmate; few others can say they have women in tents or on chain gangs."). Arpaio has said of his jails: "I want to make this place so unpleasant that they won't even think about doing something that could bring them back. . . . I want them to suffer." Richard Lacayo, *The Real Hard Cell*, Time, Sept. 4, 1995, at 31. One commentator has observed that Arpaio "boasts of being 'America's toughest sheriff' and has the litigation docket to prove it." Margo Schlanger, *Inmate Litigation*, 116 Harv. L. Rev. 1555, 1581 n.82 (2003).

Respondents are pretrial detainees at the Madison Street Jail who sued both Arpaio and the County, challenging Arpaio's practice of installing video cameras, known as "webcams," in four locations within the jail and broadcasting live images of the detainees over the Internet. The petition repeatedly describes the location of the cameras as the "public area of [the] jail." Pet. i. This description is inaccurate. As the court of

appeals explained, "[t]he four webcams were placed within areas of the jail that were not open to the public except through prearranged tours." App. 2a. The cameras were installed in four locations: the men's holding cell, including the men's bunk bed area; the area in which detainees are photographed, fingerprinted and booked; the area in which detainees are subjected to patdown searches; and the toilet and surrounding area in the women's holding cell. *Id.* at 2a-3a. The camera in the latter location was eventually moved to a hallway in response to this lawsuit. *Id.* at 3a.

After the capacity of his web servers became overwhelmed by viewers from around the world, Arpaio entered into an arrangement with a commercial website known as Crime.com to broadcast the webcam images on a 24-hour basis. *Id.* Crime.com presented the images as a form of entertainment, offering visitors the opportunity to see detainees "booked, searched and locked-up," and "[w]atch as SWAT teams raid male and female inmate holding cells in search of smuggled drugs and crude weapons." *Id.* at 4a. A link labeled "Meet Sheriff Joe" allowed visitors to "[s]pend a day in the life of Sheriff Joe Arpaio on his own turf, where inmates wear pink underwear, eat green bologna, and work on chain gangs." *Id.* In addition to broadcasting the video footage, the site also sold merchandise associated with Arpaio, including a videotape of "A Day With Sheriff Joe," which was described as a documentary film about the Sheriff's "unconventional" methods, and a souvenir version of the pink underwear worn by Maricopa County detainees, which was emblazoned with a gold star insignia, Arpaio's personal signature, and the slogan "Go Joe." *See* Complaint, Exh. B; Joe Arpaio for Sheriff Website, www.reelectjoe.com (last visited May 16, 2005) (describing "commercial" version of pink underwear).

The webcam broadcasts attracted "3 million to 10 million hits daily." Heather Haddon, *Sneak Peek: 'Jail Cam' Raises Hackles and a Lawsuit When Links to Porno Sites Are Discovered*, Village Voice, June 6-12, 2001. Among the millions of visitors to the site were those directed "from hundreds of hardcore pornography sites." *Id.*; *see also* Ninth Circuit Excerpts of Record ("EOR") Tab 71 at 13-15. For reasons that are not disclosed in the record, the Crime.com site ceased operation after this suit was filed.

Arpaio gave numerous interviews to the media concerning the webcam broadcasts. He bragged that the broadcasts drew "people from Sweden, Britain, and Germany to watch officers snap on rubber gloves and frisk incoming arrestees" and chuckled over the broadcasts' ability to "embarrass the inmates." Haddon, *supra*. Asked whether he expected other jails or prisons to adopt his webcam policy, Arpaio said that he did not: "I don't think anybody's going to do it. I've done a lot of controversial things. Nobody's copied it, but I don't care." *See* Farhad Manjoo, *The Sheriff Can't Beat the Rap,* Wired News http://wired-vig.wired.com/news/culture/0,1284,42872,00.html (last visited May 16, 2005).

The detainees filed this suit in Arizona state court and the defendants removed the case to federal court. After determining that there was a live controversy because Arpaio was seeking a new host for the webcam images, the district court preliminarily enjoined Arpaio from broadcasting the webcam images on the ground that doing so subjected the detainees to punishment in violation of the Fourteenth Amendment. Arpaio appealed. Maricopa County did not appeal.

B. The Court of Appeals' Decision

Although neither party raised the issue on appeal, the court of appeals began by assuring itself that the appeal was not moot because Arpaio intended to, and likely would, find another host for the website, and because, although the plaintiffs had been released from the jail, the controversy fell within the capable-of-repetition-but-evading-review exception to the mootness doctrine. App. 5a-9a.

The court next concluded that the district court had correctly analyzed plaintiffs' claims under the test set forth in *Bell v. Wolfish*, 441 U.S. 520 (1979). App. 10a-12a. In *Bell*, the Court held that "under the Due Process Clause, a detainee may not be punished prior to an adjudication of guilt in accordance with due process of law." 441 U.S. at 535. The *Bell* test asks whether a particular condition of confinement constitutes punishment or "whether an alternative purpose to which [the restriction] may rationally be connected is assignable for it, and whether it appears excessive in relation" to that purpose. *Id.* at 538. The court of appeals concluded that the four-part "rational relation" test for Eighth Amendment claims set forth in *Turner v. Safley*, 482 U.S. 78 (1987), was inapplicable because *Turner* dealt with convicted prisoners rather than pretrial detainees and because *Turner* involved a claim of cruel and unusual punishment under the Eighth Amendment rather than a substantive due process claim. App. 11a.

Having found that Arpaio had "failed to demonstrate that the district court applied an erroneous legal standard," the court of appeals next turned to Arpaio's arguments concerning "the district court's application of *Bell* to the facts of this case." *Id.* at 12a. These arguments, the court concluded, ignored the

standard for review of a preliminary injunction, under which "[a]s long as the district court got the law right, it will not be reversed simply because the appellate court would have arrived at a different result if it had applied the law to the facts of the case." *Id.*

"Additionally," the court "agree[d] with the district court's application of the law to the facts." *Id.* Arpaio's actions constituted punishment because the humiliation of having one's daily activities in jail broadcast over the Internet would be regarded by anyone as profoundly undesirable and because the harm caused significantly exceeded, and was independent of, the ordinary discomfort involved in being jailed. *Id.* at 13a. The practice could not be justified based on an interest in deterrence alone because "[r]etribution and deterrence are not legitimate nonpunitive governmental objectives." *Bell*, 441 U.S. at 539 n.20. Moreoever, the court explained, Arpaio's practices could not be justified based on the otherwise valid interest in ensuring accountability and public scrutiny because none of the purposes of pretrial detention was served by the broad exposure involved in the Internet broadcasts. App. 15a-17a (citing *Houchins v. KQED, Inc.*, 438 U.S. 1, 5 n.2 (1978) (plurality) ("Inmates are not like animals in a zoo to be filmed and photographed at will by the public or by media reporters, however 'educational' the process may be for others."); *Wilson v. Layne*, 526 U.S. 603 (1999)).

Finally, the court rejected Arpaio's argument that the injunction violated *his* First Amendment rights because, as the district court put it, "the Bill of Rights protect the individual from the government, not the other way around." *Id.* at 18a.

Judge Bea dissented, explaining that he would have reversed on mootness grounds. *Id.* at 20a-23a. He also

expressed his disagreement on the merits, reasoning in part that the Internet broadcasts would not have been historically regarded as punishment because they "are too new to have a historical characterization," *id.* at 27a, and suggesting that public shaming is punitive only when "characterized by face-to-face confrontation or banishment." *Id.* at 29a n.7.

Arpaio filed a petition for rehearing en banc. No judge of the court of appeals requested a vote on the petition, and the petition was denied.

REASONS FOR DENYING THE WRIT

I. There Is No Conflict Over the Appropriate Legal Standard for Conditions-of-Confinement Claims by Pretrial Detainees.

The petition asserts that the "circuit courts are split on whether the correct test to apply to detainees' conditions-of-confinement claims is the *Bell* 'punishment' test or the *Turner* 'rational relation to legitimate penological interests' test." Pet. 12. There is no such split. Every federal circuit holds that *Bell* supplies the correct test for conditions-of-confinement claims by pretrial detainees.

The absence of any conflict is made clear by recent decisions of the Fourth and Second Circuits—the two circuits that the petition identifies as following a different rule—both of which have reaffirmed their use of the *Bell* test for claims of pretrial detainees. *See Slade v. Hampton Roads Regional Jail*, --- F.3d ---, 2005 WL 1076559 (4th Cir. May 9, 2005), at * 7 (The federal circuits' decisions "reviewing conditions of pretrial detention and confinement still rely exclusively on *Bell*. Accordingly, absent an explicit indication to the contrary from

the Supreme Court, we will continue to apply *Bell* . . . to claims by pretrial detainees that certain conditions of confinement amount to punishment.") (citations omitted); *Benjamin v. Fraser*, 343 F.3d 35, 49-50 (2d Cir. 2003) (holding that *Bell* supplies the correct test for claims by pretrial detainees). Indeed, the Fourth Circuit's opinion in *Slade* specifically cites the decision below as reflecting the circuits' uniform approach. 2005 WL 1076559, at *7.

The petition creates its "split" only by distorting *Hause v. Vaught*, 993 F.2d 1079 (4th Cir. 1993), and *Covino v. Patrissi*, 967 F.2d 73 (2d Cir. 1992)—the only two decisions it describes as having applied *Turner* to claims by pretrial detainees. Pet. 23. Although both decisions refer to Eighth Amendment jurisprudence, neither rejects *Bell* in favor of *Turner* as the appropriate framework. On the contrary, *Hause* cites *Bell* as the appropriate standard to evaluate restrictions placed on the receipt of outside publications by pretrial detainees and merely seeks guidance from *Thornburgh v. Abbott*, 490 U.S. 401, 404 (1989), which analyzed similar restrictions in the prison context under *Turner*. *Hause*, 993 F.2d at 1082. The court notes that, "[a]lthough *Thornburgh* did not involve pretrial detainees," the security concerns at issue were essentially the same and thus followed *Thornburgh*'s analysis "with due regard for the particular circumstances of pretrial detainment." *Id.* (citing *Bell*, 441 U.S. at 546 n. 28).

Similarly, in *Covino*, the Second Circuit found *Turner* "instructive" on the issue of whether prison officials were justified in intruding on the Fourth Amendment rights of a pre-trial detainee who was housed in a prison alongside convicted criminals and who challenged the prison's search policy. *Id.* at 78. But *Covino* expressly declined to consider whether the plaintiff's "status as a pre-trial detainee entitled him to more

extensive fourth amendment protection with respect to visual body-cavity searches than a convicted, incarcerated inmate" because, as to both pre-trial detainees and convicted inmates, the proper inquiry was whether the searches were reasonable. *Id.* at 78 n.4 (citing *Bell*, 441 U.S. at 558).

That courts make reference to this Court's Eighth Amendment precedents in the context of claims by pretrial detainees does not mean that there is a conflict concerning the appropriate legal standard. It is not surprising that courts seek guidance from Eighth Amendment jurisprudence, particularly in cases where this Court has already addressed the constitutionality of the type of restriction at issue in the prison context. Because the Court has made clear that the protections afforded by the Due Process Clause are "at least as great as the Eighth Amendment protections available to a convicted prisoner," *City of Revere v. Mass. General Hosp.*, 463 U.S. 239, 244 (1983), the Eighth Amendment provides a minimum standard for determining the constitutional rights of pretrial detainees.[1]

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[1]The petition studiously avoids stating a position on whether the court of appeals should have applied *Turner* instead of *Bell*—or whether it would even make any difference on the facts of this case. Indeed, petitioner's briefing in the court below analyzed the due process claim *only* under *Bell* and recognized that the *Turner* test is "incompatible" with the right of pretrial detainees to be free from punishment. Def's Opening Br. at 15 n.9 ("Sheriff Arpaio does not include any discussion of the four-part *Turner* test because it is inherently incompatible with the nature of the constitutional right relied on by the District [Court]–a detainee's freedom from 'punishment.'"). In any event, the suggestion in the petition that *Turner* may have somehow displaced *Bell* or eliminated the important distinction between the rights of pretrial detainees and the

Because there is no conflict concerning the appropriate legal standard, the petition should be denied.

II. The Decision Below Does Not Conflict With Cases Concerning Megan's Laws or Perp Walks.

The petition also contends that the decision below conflicts with decisions "holding that enhancing transparency of the criminal justice system and deterring the viewing public are legitimate governmental objectives." Pet. 11. That assertion is belied by the court of appeals' specific recognition that the government *does* have a "legitimate interest in 'informing the public about the administration of criminal justice.'" App. 17a (quoting *Wilson v. Layne*, 526 U.S. 603 (1999)). Far from rejecting that principle, the decision below held that, *based on the particular facts in this case*, the plaintiffs would likely succeed in establishing that, under *Bell*, the practice of broadcasting live images of pretrial detainees in their cells over the Internet could not be justified by the "otherwise valid governmental interest in assuring accountability and public scrutiny." *Id.*

In an effort to manufacture a conflict on this point, the petition cites cases in which courts have upheld sex offender notification laws and perp walks as reasonably related to legitimate state interests. Pet. 11 (citing *Caldarola v. County of Westchester*, 343 F.3d 570 (2d Cir. 2003); *Smith v. Doe*, 538

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rights of convicted prisoners (Pet. 5, 22-24) is wrong. *See, e.g., Sandin v. Conner*, 515 U.S. 472, 484 (1995) (post-*Turner* decision stating that "*Bell* correctly noted that a detainee 'may not be punished prior to an adjudication of guilt in accordance with due process of law.' . . . The punishment of incarcerated prisoners, on the other hand, serves different aims than those found invalid in *Bell*.").

U.S. 84 (2002); *E.B. v. Vernerio*, 119 F.3d 1077 (3d Cir. 1997)). These cases involve not only very different facts, but entirely different constitutional provisions—the Double Jeopardy Clause, the Ex Post Facto Clause, and the Fourth Amendment.

More importantly, not one of these decisions holds that *any* practice that happens to disseminate truthful arrest or conviction information is *always* reasonably related to a legitimate state interest. On the contrary, these cases suggest that the government's role in such matters must be carefully circumscribed, that constitutional analysis must take into account all of the relevant facts and circumstances, and that public shaming that goes beyond the dissemination of information will likely be deemed punitive.

In *Caldarola*, for example, the question was whether a perp walk—in which a public officer arrested on corruption charges was videotaped as he was escorted across the parking lot of a government building to a police car—was an unreasonable search or seizure under the Fourth Amendment. Only after engaging in "a contextualized reasonableness analysis that seeks to balance the intrusion on privacy caused by law enforcement against the justification asserted for it by the state," 343 F.3d at 576, and taking into account all of the circumstances, including the officer's "minimal expectation in privacy in the parking lot," did the court conclude that there was no Fourth Amendment violation, *id.* at 577; *compare Lauro v. Charles*, 219 F.3d 202 (2d Cir. 2000) (perp walk staged for the benefit of videotaping was unconstitutional). Most importantly, in a passage that appears particularly prescient here, the court stressed that its decision did "not suggest that government actors have free reign to use videotape or other potentially overly intrusive means to achieve the government purposes" of

informing the public, enhancing the transparency of the criminal justice system, or deterring others from attempting similar crimes. 343 F.3d at 577.

Cases involving sex offender notification laws, also known as Megan's Laws, provide even less support for the petition's claims of conflict. In *Smith v. Doe*, this Court held that Alaska's Megan's Law did not violate the Ex Post Facto Clause because the law was rationally related to the nonpunitive purpose of protecting the public by alerting citizens to the risk of sex offenders in the community, and because the law was not excessive in relation to that purpose. *Smith*, 538 U.S. at 102-3; *accord Verniero*, 119 F.3d at 1098. No similar governmental interest is even remotely implicated in this case, and neither *Smith* nor *Verniero* held that transparency or deterrence concerns alone could justify the Alaska or New Jersey laws under review.

The petition, however, quotes isolated language from *Smith* and *Verniero* discussing the virtue of transparency in the criminal justice system and attempts to extract from that language a blanket approval for government policies executed in the name of transparency. Pet. 15, 21 (asserting that "federal courts uniformly hold that disseminating accurate public information regarding criminal history does *not* constitute punishment"). A quick glance at these decisions demonstrates that the petition has taken this language out of context and twisted its meaning. If anything, this Court's decision in *Smith* lends considerable *support* to the decision below. *Smith*'s comments on transparency in the criminal justice system are found in a passage in which this Court expressly distinguished Alaska's Megan's Law from colonial punishments "that were meant to inflict public disgrace," "such as public shaming" and "humiliation," which, like the webcam broadcasts at issue here,

"involved more than the dissemination of information." 538 U.S. at 97-98; *accord Verniero*, 119 F.3d at 1100 (distinguishing New Jersey's Megan's Law from "the stocks, cages and scarlet letters"). "By contrast," the Court noted, "the stigma of Alaska's Megan's Law results not from the public display for ridicule and shaming but from the dissemination of accurate information about a criminal record, most of which is already public." 538 U.S. at 98; *accord Verniero*, 119 F.3d at 1099 ("The 'sting' of Megan's Law for [sex offenders] results not from their being publicly displayed for ridicule and shaming but rather from the dissemination of accurate public record information about their past criminal activities. . . . This distinction makes a substantial difference when one looks for the relevant historical understanding of our society."). Arpaio cannot draw the same distinction in this case.

III. The Decision Below Does Not Conflict With *Paul v. Davis*

The petition argues, without much elaboration, that the decision below conflicts with this Court's decision in *Paul v. Davis*, 424 U.S. 693 (1976). Pet. 11, 20. There, a man who had been arrested for shoplifting sued the police, who had disseminated a flyer including his name and photograph under the heading "Active Shoplifters." The Court held that the man's interest in his reputation, standing alone, did not implicate any "liberty" or "property" interests sufficient to invoke the procedural protections of due process. 424 U.S. at 710-12. To hold otherwise, the Court reasoned, would result in the wide-ranging constitutionalization of ordinary defamation. The plaintiff in *Paul* also alleged a violation of a "right to privacy guaranteed by the First, Fourth, Fifth, Ninth, and Fourteenth Amendments." *Id.* at 712. Because the plaintiff's claim was "based, not upon any challenge to the State's ability

to restrict his freedom of action in a sphere contended to be 'private,' but instead on a claim that the State may not publicize a record of an official act such as an arrest," the Court rejected this claim as too "far afield" of its substantive privacy jurisprudence. *Id.*

In this case, the court of appeals itself succinctly explained why its decision is fully consistent with *Paul*. First, *Paul* involved procedural due process and substantive privacy claims. It did not involve the substantive due process right of pretrial detainees to be free from punishment, and the release of the information was not a condition of detention. App. 17a n.6. Second, "there is stark difference between releasing an arrest record and thereby publicizing only 'the fact of [a detainee's] arrest,' and streaming live images of a pretrial detainee's every movement across the Internet." *Id.* (quoting *Paul*, 424 U.S. at 713). Third, "[n]othing in *Bell* requires that, to be punishment, a harm must be independently cognizable as a separate constitutional violation." *Id.* 13a. Thus, the holding here that particular conditions of pretrial detention involving humiliation can constitute punishment does not suggest that reputational harm alone may otherwise give rise to an independent constitutional tort.

Stretching to invent a conflict on this point, the petition suggests that *Paul* stands for a categorical rule that "[r]eputational harm is not an injury that is constitutionally redressible," (Pet. 19), and asserts that "every federal circuit has recognized that reputational harm is not constitutionally redressable," (Pet. 20), but the petition cites *not a single case* in support of that bold proposition. Under the petition's novel and expansive reading of *Paul*, *any* governmental practice that involves the infliction of humiliation or stigma—including the colonial shaming punishments discussed by this Court in *Smith*

v. Doe—would be immune from constitutional scrutiny, even if inflicted on citizens who have not been convicted of a crime. *But see Smith*, 538 U.S. at 99 (Megan's Law, "[i]n contrast to the colonial shaming punishments," "does not make publicity and the resulting stigma an integral part" of its scheme); *Hope v. Pelzer*, 536 U.S. 730, 738 (2002) (recognizing the "risk of particular discomfort and humiliation" as a component of an "obvious" Eighth Amendment violation). Nothing in this Court's decisions or American constitutional jurisprudence supports such a theory.

III. The Interlocutory Posture of This Case and Its Unique Facts Make This Case Particularly Unsuitable for Review.

Finally, even apart from the absence of any conflicts implicated by the decision below, certiorari should be denied because the procedural posture of the case and the unusual nature of the facts make this case particularly unsuitable for review.

This case comes to the Court in an interlocutory posture, which "of itself alone furnishe[s] sufficient ground for the denial" of the petition. *Hamilton-Brown Shoe Co. v. Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916). Although the district court found that plaintiffs had demonstrated a sufficient likelihood of success on their substantive due process claim to warrant preliminary injunctive relief, proceedings on the merits have not yet begun. Moreover, the district court made no formal factual findings, there is only a barebones record, and the court below exercised only the "limited review" appropriate to an appeal from a district court's order granting a preliminary injunction. App. 9a. Because the parties have not yet taken discovery, many potentially important factual issues remain unexamined,

including the nature of Arpaio's contract with the Crime.com website, if any; whether Arpaio was paid for the webcam broadcasts or the sales of merchandise on the website; and the circumstances surrounding the placement of a camera in the women's toilet area. Indeed, factual issues prevent the parties from even agreeing on how the issue in this case should properly be framed: Arpaio maintains that the webcams broadcast images of the "public area" of the jail, while the plaintiffs insist that the relevant areas are non-public. *See* App. 3a. Obstacles of this sort are among the reasons that, even when an important threshold question has been decided by a court of appeals, this Court will "generally await final judgment in the lower courts before exercising [its] certiorari jurisdiction." *Virginia Military Inst. v. United States*, 508 U.S. 946 (1993) (Scalia, J., respecting the denial of certiorari); *see* Stern and Gressman, *Supreme Court Practice* § 4.18 (8th ed. 2002). That customary practice is well-suited for the interlocutory petition in this case.

The unusual, indeed unique, nature of the facts here also counsels against review. Unlike the Megan's Laws and perp walks at issue in the cases cited in the petition, there is no indication that Arpaio's webcam broadcasting is any more likely to become widespread among correctional agencies than his other unusual practices.[2] As noted at the outset, Arpaio has publicly stated that he does not expect other jails to imitate his webcam policy. *See* Manjoo, *supra*. There is therefore no

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[2]Respondents are aware of only one other jail or prison in the nation that has installed a webcam. *See* Anderson County, Tennessee Sheriff's Department Website, http://www.tnacso.net/cont/jailcam.php (last visited May 16, 2005). This single camera appears to show only the front desk of the jail.

reason to believe that the question presented will recur. Absent any indication that this case presents recurring issues of national importance, this Court should decline review.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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[3]Counsel acknowledge the work of Deepak Gupta, a graduate of Georgetown University Law Center and Alan Morrison Supreme Court Assistance Project Fellow at Public Citizen Litigation Group, who took a lead role in preparing this opposition.